

Judge Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

FREDERICK DARREN BERG,

Defendant.

NO. CR10-0310RAJ

GOVERNMENT'S SENTENCING  
MEMORANDUM

**I. INTRODUCTION**

Sentencing is scheduled for Thursday February 9, 2012, at 9:00 a.m. Pursuant to the terms of the 11(c)(1)(C) plea agreement, the government recommends a sentence of 216 months (18 years) in prison followed by three years supervised release with all the conditions of supervision recommended by U.S. Probation. The government has no objections to the factual recitations in the Final Presentence Report. Defendant filed several objections to the facts and conclusions in the draft presentence report including the loss amount, the number of victims, and the enhancements for obstruction of justice, sophisticated means, making a misrepresentation in a bankruptcy proceeding, and abuse of trust. The government believes defendant's objections may be resolved without an evidentiary hearing based on the facts admitted in the plea agreement, the undisputed facts in the pre-sentence report, and the attachments and declarations submitted with this memorandum. In addition, as part of his plea agreement, defendant waived his right to appeal the sentence or conviction, including any restitution order imposed and any terms of supervised release imposed should the Court impose the agreed sentence of 18 years.

## II. FACTUAL BACKGROUND

### A. Mr. Berg's History and Characteristics

Defendant, Frederick Darren Berg, is a forty-nine year old former resident of Mercer Island, Washington with a criminal history that includes a Federal bank fraud conviction in the District of Oregon in 1987, as well as a history of investigations for similar fraudulent conduct including a 1987 check-kiting investigation by the FBI, and allegations that he embezzled thousands of dollars from fraternity at the University of Oregon while acting as the treasurer. After dropping out of college around the same time, Mr. Berg worked in a variety of capacities in the real estate industry, advertising, tourism, and sales. Mr. Berg appears to have had a difficult childhood with an abusive father, and eventually took the name of his step father. However, Mr. Berg remains close with his mother and sisters. Despite his questionable past, he managed to establish a successful mortgage investment firm that operated for a number of years before Mr. Berg began stealing from his investors.

Mr. Berg has been in custody for the instant offense since October 2010. He has spent much of that time casting blame on others for the massive fraud that he committed. Over the past several months, in a series of e-mails to friends, family and a reporter for the Seattle Times, Mr. Berg has claimed he is writing a book to "expose" the misdeeds of the bankruptcy trustees who he claims increased the losses to his hundreds of victims. In what he describes as a prologue to the book, Mr. Berg casts blame on others for the results of his crime spree and appears to show only token remorse for his actions. (*See* Attachment A).

### B. The Nature and Circumstances of the Offense

Mr. Berg's offense involved a series of investment funds that he operated between early 2001 and approximately June 2010, when they were forced into involuntary bankruptcy because Mr. Berg had looted the funds for years and could no longer cover recurring interest payments and redemption requests. Over the course of approximately ten years, Mr. Berg created a series of investment funds that were purportedly established

1 to invest in the purchase of seller-financed real estate mortgages. Seller-financed real  
2 estate mortgages are mortgage loans backed by real estate in which the seller of the  
3 property holds the note and receives mortgage payments from the buyer. In some  
4 instances, sellers holding these types of loans decide to sell the notes at a discount in  
5 order to receive cash up front rather than a stream of income over many years. Mr.  
6 Berg's investment funds were primarily designed to invest in these types of mortgages on  
7 behalf of a pool of investors. Although Mr. Berg initially used investor funds for their  
8 stated purposes - to purchase and fund mortgage backed loans - he also stole over \$100  
9 million from his investors and used those funds for a variety of personal expenses and to  
10 continue his scheme by covering recurring payments to other investors.

11 Mr. Berg first started investing in seller-financed real estate mortgages after  
12 moving to Seattle, Washington in approximately 1987. According to Mr. Berg, he and  
13 three friends founded Meridian Partnership Management in 1987, after he first learned  
14 about the seller-financed real estate loan market. (*See Attachment B, Transcript of*  
15 *Recorded Interview with Darren Berg dated September 20th, 2010 at 5-9, hereinafter*  
16 *"Tr."*). Those in the business of buying seller-financed mortgages can make a profit on  
17 the discount they pay for the loan. Investing in the purchase of seller-financed mortgage  
18 loans, however, is an extremely risky investment that requires extensive knowledge of the  
19 relevant real estate market. Seller-financed loans are often loans made to borrowers who  
20 could not obtain traditional financing because of credit problems, questionable land  
21 values, or other deficiencies that disqualify the borrower from traditional bank and  
22 mortgage lender financing. Investing in seller-financed real estate loans requires a very  
23 specialized skill set that is not available to the typical investor because of the relatively  
24 small market and the lack of collective information on the size of the market. In other  
25 words, it has all the makings of a good myth that an experienced con-man can work to his  
26 advantage.

27 Throughout the 1990's, Mr. Berg's firm, Meridian Mortgage Investors, located  
28 lenders who were holding seller-financed real estate mortgages that they wished to

1 liquidate. (Tr. at 9-10). According to Mr. Berg, his firm initially brokered the purchase  
2 of these loans primarily for Metropolitan Mortgage, a Spokane based mortgage  
3 investment company that went bankrupt in 2004. (Tr. 10-13, 20-22). Beginning around  
4 1995, Mr. Berg began brokering loans to Orchard Bank, a small Oregon bank that  
5 invested heavily in the purchase of seller-financed real estate loans for several years. (Tr.  
6 20-22). Meridian also brokered a smaller number of loans to private investors who were  
7 experienced in this niche loan market. (*Id.*) Mr. Berg's firm conducted due-diligence on  
8 the loans, determined the best discount price to offer the lender for the loan and, if the  
9 lender accepted the price, Mr. Berg would broker the sale of the loan to another investor.  
10 By all accounts, this business operated successfully for several years and was  
11 exceptionally successful in the late 1990's when Orchard Bank became Meridian's  
12 primary buyer of notes. In 1999, however, Orchard Bank was sold and the new bank  
13 owners decided to leave the seller-financed loan market.

14 As Meridian lost its primary buyer of notes, Mr. Berg came up with a plan to raise  
15 capital through his own series of investment funds for the purpose of purchasing seller-  
16 financed mortgage loans. Between January 2001 and August 2010, Mr. Berg created and  
17 operated a series of investment funds purportedly for the purpose of investing in seller  
18 financed real estate contracts, hard money loans, real estate and mortgage backed  
19 securities. These funds were known as: Meridian Mortgage Investors Funds 1, 2, 3, 5, 6,  
20 7, 8, 9, and 10 (the mortgage investment funds); Meridian Real Estate Opportunity Funds  
21 1 and 2 (the real estate investment funds); and CS Note Holdco (the mortgage backed  
22 security investment fund). The mortgage investment funds were purportedly established  
23 to primarily invest in the purchase of seller financed real estate contracts and to fund short  
24 term loans backed by mortgages on real property. Payments to investors in the mortgage  
25 investment funds were purportedly to be made from the cash flows generated by borrower  
26 payments.

27 Mr. Berg opened his first three investment funds, Meridian Mortgage Investors  
28 Funds 1, 2, and 3, in early 2001 and began soliciting investors. Unfortunately, Mr. Berg

1 began these funds at the same time the pool of seller-financed real estate loans began to  
2 dry up. (Tr. at 13-14). As the traditional mortgage lending industry loosened its lending  
3 standards and interest rates declined, many borrowers with seller-financed mortgages  
4 were able to re-finance their loans with traditional banks. According to former Meridian  
5 employees, at the same time Mr. Berg opened his investment funds, the volume of calls  
6 from people who wished to sell their real-estate notes began to decline and the quality of  
7 loans available for purchase likewise declined. One former employee told the  
8 government that in late 2000 and early 2001, the decline in interest rates “killed the  
9 private mortgage industry” and many national buyers of seller-financed loans went out of  
10 business. Mr. Berg later explained that “at the same time that you’re doing this, the seller  
11 finance business is dying.” (Tr. at 111).

12 Mr. Berg, however, was wildly successful in raising capital. Despite the decline in  
13 the availability of quality seller-financed real-estate loans, Mr. Berg promoted his  
14 investment funds with promises that his firm could invest in millions of dollars worth of  
15 high-quality loans that were at a very low risk of default. For example, Mr. Berg  
16 frequently told investors that his firm primarily invested in loans with a maximum loan-  
17 to-value of 60%, while typical bank financed mortgages allowed up to 80% loan-to-value.  
18 Mr. Berg told his investors that the high standards Meridian applied in its loan  
19 underwriting process made the likelihood of default on his loans extremely low.  
20 Throughout the entire course of his investment funds, Mr. Berg routinely assured his  
21 victims that their investments were safe from the typical market forces that might  
22 negatively impact other loan portfolios.

23 As a result of Mr. Berg and his promoters’ successful efforts to raise investment  
24 funds, Mr. Berg said he quickly became alarmed at the rate of investments flowing into  
25 his funds. He stated that he was raising money faster than he could invest it, and that he  
26 “found out very quickly that I was being snowed under in money that I couldn’t spend  
27 very quickly.” (Tr. 55). Mr. Berg said there simply were not enough high quality  
28 seller-financed real estate contracts in existence to support the amount of money coming

1 into his investment funds.

2 With millions of dollars in cash flowing into his investment funds and an  
3 insufficient supply of quality loans to purchase, Mr. Berg admitted he began using his  
4 investors' money for other purposes as early as 2003. (Tr. 48). When asked why he  
5 didn't simply stop raising money, or send the money back to his investors, Mr. Berg  
6 responded "there's only one thing you can do to make people madder than being in a deal  
7 that blows up, and that's being in a deal where you just send them all their money back.  
8 You know, you can't just send everybody their money -- you can't just send everybody  
9 their money back. You can't - -." (Tr. 93). Upon reflection, however, Mr. Berg  
10 commented "I look back on that now and I think that's probably bullshit." (Tr. 94).

11 Initially, the misappropriations were limited to gifts to family and friends and an  
12 occasional large personal expense such as his February 2002 purchase of a 53' yacht with  
13 funds stolen directly from the bank account for Meridian Mortgage Investor's Fund 2.  
14 (See Declaration of Special Agent Carrie Nordyke, Exhibit 1; Tr. at pages 46, 98).  
15 However, by early 2003, Mr. Berg began stealing from Fund 2 to start his bus company --  
16 MTR Western -- purchasing buses with money wired directly out of the investment fund  
17 accounts. (Tr. 46-49; Nordyke Declaration Exhibit 1). Funds for many personal expenses  
18 including the bus company, however, were often laundered first through his personal  
19 bank accounts instead of directly from the funds' accounts.

20 According to the bankruptcy trustee, Mr. Berg diverted approximately \$50.6  
21 million from his investment funds without his victim's knowledge or permission for the  
22 purchase of busses and the operation of MTR Western and several subsidiary bus  
23 companies between 2003 and 2010. In the last two years of the fund's operations,  
24 however, Mr. Berg returned approximately \$5.7 million from the bus companies to the  
25 investment funds and used that money to pay investor interest payments and redemptions.  
26 Therefore, the net amount of investors funds that were diverted to the bus company was  
27 ultimately \$45 million.  
28

1 While the bus company consumed a significant portion of the stolen investor  
2 funds, Mr. Berg also spent his investors' money on a variety of other personal expenses.  
3 According to Mr. Berg, "from a personal perspective, the two biggest cash drains . . .  
4 airplanes and house." (Tr. 98). During the ten years that Mr. Berg operated his  
5 investment funds, he purchased: a \$1.95 million condominium at Second and Union in  
6 Seattle (Tr. 46); a \$1.25 million house in La Quinta, California (Tr. 96); a \$1.4 million  
7 condominium in San Francisco, California; and a \$5.475 million waterfront home on  
8 Mercer Island for which he spent at least an additional \$5 million to remodel (*see*  
9 Attachment C). The forensic analysis of Mr. Berg's bank accounts further showed that  
10 between 2001 and 2010, he spent at least \$5.5 million on the purchase and operation of  
11 two Lear jets (*see* Attachment D), and at least \$3.6 million on the purchase, operation and  
12 frequent modification of several yachts. (*See* Attachment E). Mr. Berg also had  
13 extraordinary monthly living expenses for things such as gardening, clothes, restaurants  
14 and travel.

15 Mr. Berg stated that in 2004, he sought to control the inflow of cash into his funds  
16 by closing Funds 1 and 3, and creating a new series of replacement funds with a method  
17 of compensation for his fund promoters designed to limit the excess cash. Because he  
18 had already stolen money from Fund 2, however, Mr. Berg said "there was no liberty to  
19 close fund two . . . the bus company owed it money" and, therefore, the fund simply did  
20 not have sufficient assets to cover the money he owed to investors. (Tr. 64). He went on  
21 to explain that because Fund 2 was "not collateralized with that number of assets, at least  
22 not mortgage assets and real estate assets . . . I'm not at liberty to close that fund." (Tr.  
23 72-73). Instead of mortgages and real estate, Fund 2 owned a bus company and "some  
24 other things." (Tr. 72).

25 After establishing his new funds with his new compensation models that would  
26 supposedly stop the excess cash flows, Mr. Berg said the new funds operated legitimately  
27 for a couple years. He admitted, however, that starting the bus company became a  
28 problem for him. According to Mr. Berg, it was "growing rapidly" and "consuming



1 unreal amounts of cash.” (Tr. 75). In addition, beginning sometime between 2005 and  
2 2007, Mr. Berg’s funds began accepting large infusions of cash from institutional  
3 investors who, “just start again snowing us under in money. And we’re raising money  
4 faster than we could spend it again.” (Tr. 81). Mr. Berg said the attention from large  
5 investors who put millions of dollars into the funds, again put him in a position where he  
6 could not find enough assets to purchase. (Tr. 106-107).

7 While looting the funds, Mr. Berg perpetuated his scheme by paying interest and  
8 redemption payments to older investors with new funds he raised from incoming  
9 investors in a classic Ponzi scheme. In order to conceal his fraud scheme and the thefts  
10 from the investment funds, Mr. Berg engaged in a variety of accounting frauds to deceive  
11 his investors and outside auditors. (Tr. 128-142). Among other things, he booked  
12 fictitious loans on the financial records for Meridian. (Tr. at 128). He also kept loans on  
13 the books after they had been paid off and in many instances stole the proceeds of loan  
14 payoffs rather than returning the money to the investment funds for the purchase of new  
15 loans. (*Id.*) Mr. Berg told investigators and the bankruptcy trustee that he generated all  
16 the loan files and loan servicing files for the “fake” loans used to deceive his auditors.  
17 (Tr. at 133-134). According to Mr. Berg, “I would work all night for probably two  
18 months leading up to the audit, two months, every weekend, 18 hours a day, creating files  
19 that literally contained everything that the real files contained, credit reports, title reports,  
20 appraisals.” (Tr. 133).

21 Exacerbating his troubles, in 2009, one of Mr. Berg’s largest investors requested a  
22 redemption of their investment that Mr. Berg was unable to cover because of his thefts  
23 from the funds. In approximately January 2009, Cornerstone Investments, an investment  
24 fund that had placed \$30 million with Mr. Berg just six months earlier in June 2008,  
25 began asking to liquidate their investments. According to Mr. Berg, “the first call was \$4  
26 million or \$5 million. We meet it. Now we still owe them \$25 million or \$26 million.  
27 We can’t meet the second call which comes along in June [2009].” (Tr. 182). Rather  
28 than come clean at that point and confess his fraud as he eventually did, Mr. Berg’s first



1 instinct was to begin protecting his ill-gotten gains – particularly his prized bus company  
2 and his Mercer Island home – by contacting an attorney who specializes in offshore asset  
3 protection trusts. Mr. Berg contacted attorney Mary Simon via e-mail and told her “I  
4 desire to form the most aggressive asset protecting trust available.” (Tr. 200-205). Over  
5 the next twelve months, every time Mr. Berg began to feel threatened with a collapse of  
6 his scheme, he would reconnect with Ms. Simon to reinstate his efforts to hide the bus  
7 company and other assets from the victims.

8 As a result of Mr. Berg’s failure to meet the redemption request, Cornerstone hired  
9 a consultant to conduct a review of Mr. Berg and Meridian that quickly led them to the  
10 conclusion that Mr. Berg was running a Ponzi scheme. In September 2009, Cornerstone  
11 initiated litigation in King County Superior Court alleging Mr. Berg had already admitted  
12 using new loan monies to pay earlier investors rather than to finance the legitimate  
13 purchases of mortgages. (*See* Attachment F; Tr. 182-183).

14 Mr. Berg, however, had started creating a series of new investment funds designed  
15 solely to raise more money to support his Ponzi scheme. (Tr. 184-190). In March 2009,  
16 Mr. Berg started a new investment fund called Meridian Real Estate Fund I, that was  
17 purportedly going to invest in real estate that had been devalued because of the recession.  
18 Instead, Mr. Berg used this fund to raise an additional \$7 million between March 2009,  
19 and June 2010, that he used to prop up his Ponzi scheme. Four months later, in July  
20 2009, Mr. Berg started another investment company called CS Note Holdco that was  
21 purportedly going to purchase Cornerstone’s investment notes at a 30% discount. (Tr.  
22 184-185). Instead, Mr. Berg simply used the \$4.055 million raised from investors in CS  
23 Note Holdco wherever he needed to continue the Ponzi scheme and fund his lifestyle.  
24 Mr. Berg also started a second Real Estate fund, but fortunately that fund only managed  
25 to steal another \$764,000.00 before the scheme collapsed. Finally, in November 2009,  
26 after Cornerstone had filed its lawsuit, Mr. Berg opened two new Mortgage Investment  
27 funds, Meridian Mortgage Investors Funds 9 and 10. As with CS Note Holdco and the  
28 Real Estate fund, these too were established solely to perpetuate the Ponzi scheme. All

1 told, between March 2009, and August 2010, Mr. Berg managed to steal another \$16  
2 million in his “survival mode” attempt to salvage the scheme. According to Mr. Berg,  
3 during these last two years of the scheme, almost every dollar he raised from his investors  
4 went straight to other investors in the form of interest payments or redemptions. (Tr.  
5 172).

6 Despite the imminent collapse of his scheme, as late as March 2009, Mr. Berg was  
7 meeting with investors to assure them of the continued health of his investment funds.  
8 (See Attachment I). During video recorded presentations to investors, Mr. Berg said that  
9 Meridian had successfully avoided the bad economic conditions affecting the real estate  
10 industry and assured his investors that their money was safe. Mr. Berg told the investors  
11 that because of Meridian’s careful loan selection criteria, borrowers were not defaulting  
12 on loans held by Meridian. He told his investors he was “having fun in this economy”  
13 and that delinquencies in the Meridian loan portfolio were down. In a telling sign of the  
14 troubles to come, however, Mr. Berg commented that “what keeps me up at night is that  
15 you all are gonna freak out” and make a “run on the bank.” Yet, he claimed Meridian  
16 was buying more loans and that the quality of the loans they were purchasing was going  
17 up.

18 By June 15, 2010, Mr. Berg was unable to keep up with the monthly interest  
19 payments and missed another large payment to Cornerstone. Mr. Berg then spent several  
20 weeks avoiding investors and telling a variety of lies to the investors to cover his scheme.  
21 On July 9, 2010, investors in Funds 2, 5, 7, and 8 initiated actions to force the funds into  
22 involuntary Chapter 11 bankruptcy. *See In Re: Meridian Mortgage Investors Funds II-X*,  
23 Case Number 10-17952 (Bankr. W.D. Wash.). That bankruptcy case eventually included  
24 all of the funds with the exception of CS Note Holdco.

25 Over the course of the next two months, Mr. Berg provided extensive information  
26 to the bankruptcy trustee about the scope of his fraud. At the same time, however, he  
27 repeatedly delayed meeting with the government and engaged in a pattern of obstructive  
28 conduct. Mr. Calvert and his staff contacted the government repeatedly because Mr. Berg

1 was preventing them from gaining full access to the records necessary for their  
2 investigation. Among the challenges they encountered were: Mr. Berg's initial refusal to  
3 surrender control of certain bank accounts; Mr. Berg's initial refusal to surrender control  
4 over the post office box that received the mail for all of his companies including the  
5 investment funds; Mr. Berg's efforts to open and fund new bank accounts without their  
6 knowledge; Mr. Berg's initial refusal to provide access to banking records for Meridian  
7 Partnership Management and MPM Investor Services; and incomplete access to records  
8 of other Meridian companies that had received illegal transfers of money from the  
9 investment funds.

10 After eventually meeting with the government and giving a four-hour interview in  
11 which he detailed the history of his fraud, by late September 2010, Mr. Berg appeared  
12 ready to truly cooperate and accept responsibility. On the afternoon of October 13, 2010,  
13 however, a consultant working with bankruptcy trustee Diana Carey who had control over  
14 Mr. Berg's personal estate, contacted the FBI with new information that showed Mr. Berg  
15 was continuing to conceal assets and lie to both the bankruptcy trustees and the  
16 government. (*See Complaint at Pages 29-34*). Follow-up investigation by the FBI  
17 revealed Mr. Berg had concealed approximately \$400,000.00 in proceeds from the sale of  
18 real estate and opened new bank accounts to hide these funds. He used this money for a  
19 variety of personal expenses including lease payments on a Porsche Cayenne and Porsche  
20 911 Turbo Cabriolet, twelve months advance rent on a Los Angeles apartment, the  
21 purchase of an Audi S5 convertible, a retainer for a criminal defense attorney, and  
22 insurance on jet skis and his yacht. As a result, the government obtained an arrest warrant  
23 and sought Mr. Berg's detention.

24 Despite the slew of problems that the trustees experienced with Mr. Berg,  
25 including his lies, his efforts to hide assets, and his generally difficult attitude, Mr.  
26 Calvert has repeatedly told FBI agents and the United States Attorneys Office that Mr.  
27 Berg's assistance proved valuable to his investigation. When recently asked to assess the  
28 value of Mr. Berg's assistance, Mr. Calvert stated that working with Mr. Berg allowed

1 him to move quickly to secure assets and helped the trustee's staff provide a "very good"  
2 disclosure of the scope of the case to the investors early in the process. Moreover, while  
3 the government objected to Mr. Berg's proposal to receive compensation from the  
4 trustees for his "cooperation," Mr. Calvert lobbied the government throughout the process  
5 in support of the compensation agreement because he believed that Mr. Berg's  
6 cooperation, even in light of his deceit and misdirection, was worth the \$15,000.00 per  
7 month that he wished to pay Mr. Berg. Mr. Berg, however, wisely chose to refuse the  
8 compensation from Mr. Calvert (although he continued to accept compensation from  
9 Diana Carey, the Chapter 13 trustee for his personal estate, until he was arrested).

10 In the end, a forensic accounting reveals approximately \$128 million in losses to  
11 investors. Agents and forensic analysts from the FBI, DFI and IRS-CID, are continuing  
12 to conduct an extensive forensic accounting of Mr. Berg's empire. They have collected  
13 all available bank records for every account used or controlled by Mr. Berg between 2001  
14 and November 2010, and entered every transaction into an Excel spreadsheet that they  
15 have utilized to calculate the amounts of money Mr. Berg stole, how much he spent on  
16 particular items, and how much money his victims have lost as a result of his fraud. The  
17 forensic accounting includes records for approximately 93 different bank accounts at 10  
18 different banks and resulted in a database with over 124,000 rows of data. (*See Nordyke*  
19 *Declaration*). To date, the agents and analysts have completed a detailed accounting for  
20 679 out of 844 investor-victims and are continuing to verify the final restitution and loss  
21 amounts for the remaining 165 victims in preparation for the restitution hearing.

22 Using this database, as of February 1, 2012, the agents have documented at least  
23 \$244,833,410.86 in principal investment deposits (cash in) from investors between  
24 January 2001 and July 2010. During that same time period, Mr. Berg paid out  
25 \$121,442,944.68 to investors in the form of interest payments and redemptions. This  
26 leaves \$123,390,466.18 in principal investments missing. An additional \$3,938,412.72 in  
27 withdrawals cannot be categorized because the original items (checks, withdrawal slips,  
28 wire transfer records, etc.) are unavailable. Therefore, the distribution of those funds is

1 unknown (i.e. the government does not know who received these funds). Viewed in the  
2 light most favorable to Mr. Berg, this could represent additional funds returned to  
3 investors, resulting in an outstanding loss amount of \$119,452,053.46. However, an  
4 additional \$24.7 million in deposits into Mr. Berg's accounts also cannot be categorized  
5 because the original items (checks, deposit slips, etc.) are unavailable. Therefore, the  
6 source of the funds is unknown (i.e. the government does not know who gave these funds  
7 to Mr. Berg or his businesses). This could very well represent additional investor funds  
8 that were lost as a result of Mr. Berg's fraud. The agents and analysts are continuing to  
9 review records in this case in an effort to further clarify the exact amounts of loss and the  
10 number of victims for purposes of the restitution hearing.

11 The overall loss calculation stated above, however, provides credit to Mr. Berg for  
12 amounts that have been returned to individual investors beyond their original principal  
13 investment. Dozens of investors received all of their original principal investment back  
14 plus interest over the course of the scheme, while the vast majority of investors received  
15 only a portion of their original investment, or none at all. Therefore, this overall loss  
16 calculation fails to account for the total amount of loss to the victims who did not receive  
17 their total investment principal. As of February 1, 2012, the agents and analysts  
18 conducting the forensic accounting have confirmed a total of \$9,374,961.96 that was paid  
19 to investors above and beyond their initial principal investment amount. Therefore, the  
20 total loss amount is at least \$128,827,015.42.

### 21 **C. Victim Impact and Restitution**

22 The agents have also separated out all investor transactions from the combined  
23 database to create a separate database in order to aid their analysis of the total loss amount  
24 and the amount of restitution owed to each particular investor. They have been working  
25 on these calculations since early December 2011, when they completed the first draft of  
26 the combined database. Many of the victims' restitution calculations were rather simple  
27 to determine based on the first draft of the combined database. Others, however, require  
28 additional research to be sure that the agents have accurately recorded all of the investors'

1 deposits and withdrawals from Mr. Berg's various bank accounts. In order to do so, they  
2 must carefully review the database and conduct additional research using records seized  
3 from Mr. Berg's businesses, records provided by the bankruptcy trustees, and relevant  
4 bank records. Because of the amount of time still necessary to conduct this additional  
5 research, the government requested, and the Court has scheduled a separate restitution  
6 hearing for April 6, 2012, at 11:00 a.m.

7 The victims who invested in Mr. Berg's series of mortgage investment funds  
8 consist of people from a wide variety of backgrounds. Some were sophisticated investors  
9 who trusted Mr. Berg with millions of dollars, others were ordinary people seeking a safe  
10 investment for their retirement. Despite the fact that Mr. Berg's funds were marketed as  
11 unregulated securities that were supposedly only available to sophisticated "accredited  
12 investors" who met a high income and means test, Mr. Berg often ignored these  
13 requirements and accepted investments from those who did not meet these qualifications.  
14 Indeed, many of Mr. Berg's victims will be forced to make significant changes to their  
15 lifestyle and that of their families such as foregoing retirement, taking additional jobs to  
16 support their children's education and selling their homes. Others are likely to be forced  
17 into bankruptcy and may also lose their homes because of the financial devastation Mr.  
18 Berg's fraud has caused.

19 The total number of victims in this case is well over 500. Over one hundred sixty  
20 of these victims have submitted detailed victim impact statements setting forth the  
21 devastation that Mr. Berg's fraud has caused in their lives. Those statements have all  
22 been made available to the Court through U.S. Probation. The victims, however, also  
23 have a right to be heard "at any public proceeding in the district court involving release,  
24 plea, **sentencing**, or any parole proceeding." 18 U.S.C. § 3771(a)(4). In *United States v.*  
25 *Burkholder*, 590 F.3d 1071 (9th Cir. 2010), the Ninth Circuit noted that the legislative  
26 history of the 2004 Crime Victims' Rights Act suggests that Congress was concerned  
27 with ensuring that crime victims be allowed to speak at proceedings and that this right not  
28 be replaced with a written statement. *See Burkholder*, 590 F.3d at 1075 (quoting 150

1 Cong. Rec. S10910, S10911 (daily ed. Oct. 9, 2004) (statement of Sen. Kyl).

2 **III. THE PLEA AGREEMENT AND THE SENTENCING GUIDELINES**  
 3 **CALCULATIONS**

4 **A. The Plea Agreement**

5 Mr. Berg pleaded guilty to one count of Wire Fraud, one count of Money  
 6 Laundering, and one count of Bankruptcy Fraud - Asset Concealment pursuant to a plea  
 7 agreement entered under Federal Rules of Criminal Procedure Rule 11(c)(1)(C). The plea  
 8 agreement includes a statement of facts setting forth a summary of Mr. Berg's scheme to  
 9 defraud his investors as well as his efforts to conceal assets from the bankruptcy trustee  
 10 responsible for his personal estate following the collapse of his scheme. As part of the  
 11 agreement, the parties agreed to recommend a sentence of 216 months (18 years)  
 12 imprisonment. Should the Court reject this agreement, either party may withdraw from  
 13 the plea agreement. Should the Court impose the recommended sentence, Mr. Berg has  
 14 waived his right to appeal or bring a collateral attack on the conviction except as it may  
 15 relate to ineffective assistance of counsel.

16 **B. The Presentence Report and the Parties Offense Level Calculations**

17 United States Probation prepared a final presentence report on January 12, 2012  
 18 with the following offense level calculations:

19	Base Offense Level	7
20	Loss Amount (\$100,000,000.00-\$200,000,000.00)	26
21	250 or More Victims	6
22	Misrepresentation in Bankruptcy Proceeding	2
23	Sophisticated Means	2
24	Money Laundering Conviction Under Section 1957	1
25	Abuse of Position of Trust	2
26	Obstruction of Justice	2
27	Adjusted Offense Level	<u>48</u>
28	Acceptance of responsibility	-3



Total Offense Level

45

Because Mr. Berg's prior conviction for Bank Fraud in the District of Oregon is over ten years old, U.S. Probation also determined that Mr. Berg was in criminal history category I. Based on an offense level of 45 and a criminal history category of I, Mr. Berg's guideline range is life. Based on the charges to which Mr. Berg pleaded guilty, his maximum term of imprisonment cannot exceed thirty-five years.

### C. Argument

#### i. The loss amount is over \$100,000,000.00

The United States has documented an actual loss to investors of approximately \$128 million. (*See* Nordyke Declaration). This amount was calculated as follows based on bank records for all of the accounts under Mr. Berg's control between January 2001, and November 2010:

Amounts received from investors: \$244,833,410.86

Amounts repaid to investors: - \$121,442,944.68

Overall Loss Amount: \$123,390,466.18

An additional \$3,938,412.72 in withdrawals cannot be categorized because the original items (checks, withdrawal slips, wire transfer records, etc.) are unavailable. Therefore, the distribution of those funds is unknown (i.e. the government does not know who received these funds). Viewed in the light most favorable to Mr. Berg, this could represent additional funds returned to investors, resulting in an outstanding loss amount of \$119,452,053.46.

This overall loss calculation provides credit to Mr. Berg for amounts that may have been returned to individual investors beyond their original principal investment.

Application Note 3(F)(iv), provides that "in a case involving a fraudulent investment scheme, such as a Ponzi scheme, loss shall not be reduced by the money or the value of the property transferred to any individual investor in the scheme in excess of that investor's principal investment (i.e., the gain to an individual investor in the scheme shall not be used to offset the loss to another individual investor in the scheme)." Therefore,

any amounts paid to individual investors beyond their original principal investment amount must be added to the overall loss amount. The forensic accounting to date has revealed at least \$9,374,961.96 that was paid to individual investors above and beyond their initial principal investment amount (i.e. these individual investors are not entitled to any restitution because they received their principal investment plus interest during the course of the scheme and made a profit). Adding this to the overall loss results in a total loss of \$128,827,015.42.<sup>1</sup>

Because the guidelines provide that “the court need only make a reasonable estimate of the loss” these calculations are sufficient for purposes of the sentencing guidelines calculations. *See* USSG § 2B1.1 App. Note 3(C).

**a. Credits Against Loss For Value of Collateral Pledged**

In his objections to the draft presentence report, Mr. Berg argues that he should receive some form of credit against the loss amount for “market losses and investor credits.” Although Mr. Berg may be entitled to a credit against loss pursuant to Application Note 3(E)(ii) based on the fair market value of the loans and real estate owned by the funds at the time of sentencing, or any amount already received by the bankruptcy trustee for the sales of those assets, the plain language of the guidelines establish a defendant is not entitled any credit for “market losses.” Application Note 3(E)(ii) provides that loss shall be reduced “in a case involving collateral pledged or otherwise provided by the defendant, the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, **the fair market value of the collateral at the time of sentencing.**” *See* USSG § 2B1.1 App. Note 3(E)(ii).

As of July 7, 2011, the bankruptcy trustee indicated that the Meridian Funds trust

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<sup>1</sup> This figure is subject to additional adjustment as the forensic accounting is completed. The agents and analysts are continuing to confirm the final loss or gain figures for approximately 165 investors. Of the \$10,597,996.26 in gain currently documented, the agents have confirmed \$9,374,961.96 (i.e. these investors’ records have been reviewed and compared with all other evidence and their calculations have been verified). (*See* Nordyke Declaration).

1 held loans with an estimated fair market value of approximately \$9 million and real  
 2 estate with an estimated value of approximately \$2.7 million that constitutes collateral  
 3 pledged or otherwise provided by the defendant. (See Attachment G at 6 - Trustee's First  
 4 and Final Application for Compensation and Reimbursement of Expenses at 6, *In Re:*  
 5 *Meridian Mortgage Investors Fund V, LLC, et al.*, Case No. 10-17952 (BKR W.D. Wa.)  
 6 and Attachment H - Meridian Investors Trust Fair Market Value as of July 7, 2011). The  
 7 trustee also held approximately \$1.5 million in cash recovered from the disposition of  
 8 collateral as of July 2011. Therefore the legitimate credits against loss are calculated as  
 9 follows:

10	Outstanding Loss Amount:	\$128,827,015.42
11	Money Returned	- \$1,514,429.30
12	Loan Portfolio	- \$9,000,000.00
13	Real Estate Owned (REO)	<u>- \$5,000,000.00</u>
14	Loss After Credits	\$113,312,586.12

15 Mr. Berg's argument that he should receive additional credit against the loss  
 16 amount because of the impact of market forces on the value of his loans and real estate is  
 17 specious. Mr. Berg claims that the losses suffered in this case are largely the result of  
 18 market forces. Yet, Mr. Berg was lying to his investors for years regarding those same  
 19 market forces, about how he would use his investors' money, about the quality of the  
 20 loans he was purchasing, and the basic financials of the funds such as how many loans the  
 21 funds actually purchased and held. Indeed, as late as March 2009, just as his scheme is  
 22 beginning to collapse, Mr. Berg assured his investors in a video taped presentation that  
 23 the market had not damaged the investment funds. Moreover, Mr. Berg has admitted to  
 24 engaging in elaborate efforts to deceive independent auditors hired to audit the financials  
 25 of some of his investment funds including fabricating false loan files and falsifying his  
 26 accounting records so auditors would not uncover his fraud. Absent his lies about the  
 27 market and his use of the funds' money, the victim-investors who still had money  
 28 invested with Mr. Berg when the scheme unraveled in 2010, would not have placed their

1 money with him or kept it with him. Market forces had nothing to do with the victims'  
 2 decisions to give their money to Mr. Berg or keep their money with Mr. Berg. On the  
 3 contrary, Mr. Berg's false statements about the market, about the number of loans owned  
 4 by the funds, about the value of the loans owned by the funds, and about how he would  
 5 use his investors' money, was what fraudulently induced his many investors to place their  
 6 money with him and keep their money with him. Under such circumstances it would be  
 7 absurd to reward Mr. Berg with a credit against the severity of his fraud based on the  
 8 same market forces he lied about.

9 **b. Credits Against Loss For Property Returned to the Victims**  
 10 **Before the Offense Was Detected.**

11 Mr. Berg also argues that he should receive a credit against the loss amounts for  
 12 funds recovered by the bankruptcy trustees through the sales of his bus company, his  
 13 house, and other personal assets that he had bought with the proceeds of his fraud. As  
 14 Mr. Calvert has indicated in his pleadings submitted to the bankruptcy court, recoveries  
 15 from Mr. Berg's personal estate through the sales of his bus company, houses, and other  
 16 personal items, will bring approximately \$5 million that will be distributed to the victims  
 17 as part of the bankruptcy proceedings. (*See* Attachment H). In addition, Mr. Calvert  
 18 estimates he may have a variety of civil causes of actions against third parties that may  
 19 result in additional recoveries for the victims. (*Id.*) While these amounts should be  
 20 credited against Mr. Berg's restitution order, he is not entitled to any additional credit  
 21 against the loss amount for purposes of the sentencing guidelines calculations.

22 Application note 3(E)(i) provides a defendant's loss amount shall be reduced by  
 23 the fair market value of property returned by the defendant before the offense was  
 24 detected. Pursuant to Application Note 3(E)(i), the "time of detection of the offense is  
 25 the earlier of (I) the time the offense was discovered by a victim or government agency;  
 26 or (II) the time the defendant knew or reasonably should have known that the offense was  
 27 detected or about to be detected by a victim or government agency." Mr. Berg did not  
 28 return any of the items recovered in the bankruptcy proceedings until long after his

1 victims had discovered his offense and the FBI and Washington State Department of  
2 Financial Institutions had already begun investigating his scheme. None of these assets  
3 were returned to the victim investors until after Mr. Berg was forced into involuntary  
4 bankruptcy in June 2010. As shown above, some of Mr. Berg's victims had started to  
5 discover his fraud as early as January 2009. Moreover, Mr. Berg admitted in his  
6 interview with the government that he knew his fraud was unraveling throughout 2009  
7 and 2010. Mr. Berg surely knew throughout most of 2009 and 2010 that his fraud had  
8 been uncovered or, at the very least, was about to be detected. Yet, throughout 2009 and  
9 2010, rather than do the right thing and stop his massive fraud scheme, Mr. Berg did the  
10 exact opposite. He redoubled his efforts to steal money and created five new investment  
11 funds resulting in another \$16 million in losses. Although this is only a portion of Mr.  
12 Berg's huge scheme, a \$16 million Ponzi scheme in any other context is a huge fraud. In  
13 light of this evidence, Mr. Berg is not entitled to any credit for the items returned to  
14 investors as part of the bankruptcy process.

15 **ii. Obstruction of Justice**

16 Mr. Berg argues that he should not receive an enhancement based on obstruction  
17 of justice. Although Mr. Berg's cooperation with the bankruptcy trustee was  
18 unquestionably valuable and the government has agreed to recommend a sentence below  
19 the guidelines largely as a result of that cooperation, Mr. Berg's behavior throughout the  
20 process involved repeated obstruction of justice. In addition to engaging in a pattern of  
21 obstruction to hide assets from the bankruptcy trustee and obstruct the bankruptcy court  
22 process, Mr. Berg also obstructed the criminal investigation. During his interview with  
23 the U.S. Attorney's Office and the case agents, Mr. Berg lied about his bank accounts.  
24 Based on the nature of this case and Mr. Berg's obvious intelligence, he was well aware  
25 of the importance of his bank accounts in terms of the criminal investigation. Despite a  
26 clear request for him to list what accounts he still controlled, Mr. Berg failed to disclose  
27 an account into which he had deposited \$145,000.00 just two days prior to his interview.

28 Mr. Berg also continued to attempt to obstruct justice even after his arrest. As the

1 government noted at the detention hearing, Mr. Berg attempted to tamper with witnesses  
 2 on at least two occasions early in his detention at the Federal Detention Center. In an  
 3 electronic mail message Mr. Berg sent to one of the bankruptcy trustees shortly after his  
 4 arrest, Mr. Berg attempted to manipulate the trustee into supporting his request for release  
 5 pending trial and even went so far as to offer a \$150,000 payment to the bankruptcy estate  
 6 (money that in fact belonged to the bankruptcy estate) in exchange for the trustee's  
 7 support. In addition, on November 3, 2010, in response to a witnesses request for advise  
 8 on how to handle an interview request from the investigating FBI agent, Mr. Berg  
 9 provided the witness with detailed instructions on how to delay the interview. The Court  
 10 considered this evidence at Mr. Berg's detention review hearing on December 17, 2010,  
 11 and found "this type of conduct as being consistent with deception, and attempting to  
 12 interfere with the process by misleading with false information." (*See* Dckt. 54 Verbatim  
 13 Reporting of Proceedings December 17, 2010, at 31).

14 Mr. Berg further claims that applying an obstruction enhancement amounts to  
 15 double counting because he has been separately charged with bankruptcy fraud. Mr.  
 16 Berg, however, not only obstructed the bankruptcy court process - he also actively  
 17 obstructed the criminal investigation and attempted to tamper with witnesses in the  
 18 criminal investigation. Therefore, the enhancement for obstruction of justice applies  
 19 separately for Mr. Berg's conduct in relation to the criminal investigation. Because the  
 20 enhancement applies without reference to the bankruptcy fraud and misrepresentations  
 21 Mr. Berg made in regards to the bankruptcy case, it does not amount to double counting.

### 22 **iii. Misrepresentations During Bankruptcy Proceedings**

23 Mr. Berg's objection to the application of an enhancement for making a  
 24 misrepresentation during a bankruptcy proceeding is equally without merit. If this  
 25 enhancement did not apply in a case involving a conviction for bankruptcy fraud, it would  
 26 simply never apply. Indeed, the Sentencing Commission noted that the amendment to the  
 27 guidelines that implemented the enhancement for making a misrepresentation or other  
 28 fraudulent action during the course of a bankruptcy proceeding was added specifically to

1 be applied in cases of bankruptcy fraud. *See* USSG App. C. Amend. 597 (“Therefore,  
 2 any case involving a bankruptcy fraud will result in a two-level enhancement”). Although  
 3 Mr. Berg also argues that application of this enhancement would amount to double  
 4 counting because of the obstruction enhancement, the Application Notes to Section 2B1.1  
 5 provide that a bankruptcy misrepresentation enhancement is only inappropriate in  
 6 conjunction with an obstruction enhancement when “the conduct that forms the basis for  
 7 [the bankruptcy misrepresentation enhancement] is the **only** conduct that forms the basis  
 8 for an [obstruction enhancement].” *See* USSG § 2B1.1 App. Note 7(E)(ii) (emphasis  
 9 added). In this case, the conduct that forms the basis for the bankruptcy  
 10 misrepresentation enhancement is not the only conduct that supports the obstruction  
 11 enhancement. Therefore, both should apply.

#### 12 **iv. Abuse of Trust**

13 Mr. Berg further argues that he should not receive an enhancement for abuse of  
 14 trust. He claims he possessed no special skills, training or licensing that would  
 15 characterize such a position of trust. This is absurd. Mr. Berg himself constantly  
 16 emphasized his special skills in the seller-financed real estate mortgage industry in  
 17 furtherance of his scheme. He told his investors that his twenty years of experience in the  
 18 industry made him exceptionally qualified to handle their money. Mr. Berg was an expert  
 19 in the seller-financed real estate loan market and used that expertise to deceive his victims  
 20 into believing he offered a safe and secure investment vehicle. In recommending this  
 21 enhancement, U.S. Probation also notes that even after the financial and real estate  
 22 markets began to take a down turn, Mr. Berg met personally with many of his investors to  
 23 assure them their money was safe with statements based on his expertise in the industry  
 24 and claims that the market had not adversely impacted his funds. Therefore, Mr. Berg’s  
 25 offense involved a significant abuse of trust.

26 In addition, Mr. Berg admitted that he also managed a small number of trusts on  
 27 behalf of elderly clients. Mr. Berg admitted that during the course of the scheme, he took  
 28 money from these individuals for whom he was acting as a trustee. (Tr. 217-224). As



1 with the other investors in his mortgage funds, the beneficiaries of the trusts Mr. Berg  
 2 managed relied upon his training and expertise in the financial markets to manage their  
 3 assets. Even if Mr. Berg's larger scheme to defraud the investors in the mortgage funds is  
 4 not an abuse of trust (a dubious proposition), his out-and-out theft from trust accounts is a  
 5 text-book example of an abuse of trust.

#### 6 **v. Sophisticated Means**

7 Although Mr. Berg did not formally state an objection to the enhancement for  
 8 sophisticated means, his objection letter delivered to U.S. Probation does not include this  
 9 enhancement as part of the defense guideline calculations. To the extent Mr. Berg  
 10 believes this enhancement is inappropriate, the government agrees with U.S. Probation  
 11 that in light of the extraordinary steps Mr. Berg took to conceal and perpetuate his scheme  
 12 through massive accounting fraud, deception of outside auditors and extremely  
 13 complicated banking transactions, an enhancement for sophisticated means is particularly  
 14 appropriate. *See* USSG § 2B1.1 App. Note 8(B) ("sophisticated means" means especially  
 15 complex or especially intricate offense conduct pertaining to the execution or  
 16 concealment of an offense.").

#### 17 **D. Basis for Sentencing Recommendation**

18 The United States recommends the Court accept the parties agreed  
 19 recommendation of 18 years in prison followed by three years supervised release. The  
 20 government recommends this substantial departure from the advisory sentencing  
 21 guideline range based on a number of factors including Mr. Berg's cooperation with the  
 22 bankruptcy trustees, his participation in an on-the-record comprehensive interview with  
 23 the government, the fact that he entered a guilty plea long before his scheduled trial date  
 24 unlike many defendants of his ilk, and the need to avoid unwarranted sentencing disparity  
 25 among similarly situated defendants. Nonetheless, the government believes a long term  
 26 of imprisonment is necessary to reflect the seriousness of this offense and the need to  
 27 protect the public from a defendant who continues to demonstrate an unwillingness to  
 28 fully accept responsibility and will likely remain a risk to reoffend upon release. An 18

1 year sentence is an attempt to balance the need to reward Mr. Berg's good decisions and  
2 encourage others to make similar (and hopefully more forthright) efforts to come forward,  
3 with the need to impose a term that will still protect the public, promote respect for the  
4 law and reflect the seriousness of his offense.

5 Mr. Berg's efforts to assist the bankruptcy trustees and his extraordinary on-the-  
6 record interview with the government deserve recognition in the form of a sentence below  
7 that recommended by the guidelines. While clouded by his repeated efforts to deceive  
8 and his apparent inability to fully accept the severity of his own conduct, Mr. Berg did  
9 provide a unique and substantial level of assistance to the bankruptcy trustees tasked with  
10 unraveling his fraud. Both trustees have indicated that his assistance was extremely  
11 helpful despite his attempts at obstruction. Overall, Mr. Berg's presence in their offices  
12 on a day-to-day basis early in the bankruptcy proceedings helped them develop an  
13 understanding of his businesses, the records they needed to review, the scope of the fraud  
14 and what they needed to do to stabilize the situation. Without that assistance, the trustees  
15 would have faced a very difficult task that would have resulted in more losses to the  
16 victim investors in this case.

17 A sentence of 18 years also serves to avoid unwarranted sentencing disparity  
18 among similarly situated defendants. The most similarly situated defendant recently  
19 prosecuted in this district was Kevin Lawrence. *United States v. Kevin Lawrence*,  
20 CR02-260MJP (W.D. Wa.). Mr. Lawrence, who was also represented by defense counsel  
21 Russell Aoki, defrauded a number of investors out of approximately \$92 million. He was  
22 selling stock in a company, Znetix, that was purportedly going to develop high-end health  
23 clubs. Mr. Lawrence and others were indicted and Lawrence pleaded guilty shortly  
24 before trial. The parties in that case jointly agreed to recommend a 20 year sentence,  
25 which Judge Pechman followed. As part of the plea agreement, Mr. Lawrence agreed to  
26 provide full cooperation against his co-conspirators, but he ultimately did not provide any  
27 cooperation of substance.

28 While Mr. Berg's fraud involves approximately \$20 million in additional losses,

1 Mr. Berg's level of assistance to the government and the bankruptcy trustees allowed this  
 2 case to be prosecuted in a much more timely and efficient manner than the Lawrence  
 3 case. In addition, unlike Mr. Lawrence, Mr. Berg entered a guilty plea over two months  
 4 before the trial date (and likely at least six to twelve months before a trial could have  
 5 possibly begun) and saved the government and the trustees from engaging in a much more  
 6 costly investigation. Moreover, Mr. Lawrence played a leadership role in a conspiracy  
 7 that involved him recruiting others to actively join his scheme. Based on these significant  
 8 differences, the government believes Mr. Berg deserves a sentence slightly less than that  
 9 imposed in the Kevin Lawrence case.

10 A sentence of 18 years, however, is extremely important to reflect the seriousness  
 11 of the offense, promote respect for the law and provide just punishment. Any further  
 12 departure below the agreed recommendation would severely undercut these goals. Mr.  
 13 Berg's fraud is by far the largest Ponzi scheme ever prosecuted in the State of  
 14 Washington. The restitution order that the government will seek on April 6, 2012, is  
 15 likely to involve over 500 victims and approximately \$130 million in total restitution. A  
 16 mere fraction of this amount was recovered as part of the bankruptcy process and,  
 17 therefore, these victims stand little chance of recovering the vast majority of the money  
 18 they entrusted to Mr. Berg. Therefore, the government believes a sentence of 18 years is  
 19 necessary to and appropriate to satisfy all of the goals of sentencing set forth in Title 18,  
 20 United States Code, Section 3553(a).

21 DATED this 3rd day of February, 2012.

22 Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 3, 2012, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorney(s) of record for the defendant(s).

s/Anna Chang

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